IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1959 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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NEW INDIA ASSURANCE CO LTD - Appellant(s)
Versus
LATIFBHAI DAUDBHAI & 2 - Defendant(s)

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Appearance :
MR SUNIL B PARIKH for Appellant(s) : 1,
RULE SERVED for Defendant(s) : 1 - 2.
NOTICE SERVED for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 07/08/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant has challenged the judgement and award dated 06.03.90 passed by the Motor Accident Claims Tribunal (Main) at Bharuch in Motor Accident Claim Petition No. 707 of 1985 whereby the Tribunal awarded an amount of Rs. 41,680/- by way of compensation payable by the original opponent nos. 1, 2 and 5 to the original claimant jointly and severally together with interest at the rate of 12% per annum.

2. The original claimant-present respondent no.1 had

filed claim petition seeking compensation to the tune of Rs. 1,00,000/- in respect of the vehicular accident which occurred on 15th October while the appellant was travelling in a truck bearing no. GTD 5968 as second driver. The original opponent no.1 drove the said truck rashly and negligently whereupon the original claimant was injured on his leg. He was taken to the hospital where his leg was operated and he was bed ridden for a pretty long time. The claim petition came to be filed under the said circumstances and the Tribunal after hearing the parties passed the aforesaid award.

3. Learned counsel for the appellant has contended that the Tribunal has erred in holding that the appellant is liable to pay compensation to the original claimant-present respondent no.1. He has further contended that the Tribunal failed to appreciate that the respondent no.1 was neither the driver of the said vehicle nor the cleaner and under the terms of the policy the appellant -insurance company is not liable to compensate respondent no.1.

4. Heard learned counsel and gone through the documents placed on record including the award of the Tribunal. This issue is squarely covered by the decision of the

Apex Court in the case of Ramashray Singh v New India Assurance Co. Ltd reported in 2003(10)SCC 664 wherein it is held that the insurance company covers only the person or classes of persons specified in the policy meaning thereby only a driver, a conductor or examiner of tickets and that no other employee such as cleaner is included. In the present case, it is borne out from the records that the insurance co. has not provided insurance for the second driver and it is not covered under section 95 of the Motor Vehicles Act. In that view of the matter, considering the decision of the Apex Court, I am of the view that the Tribunal has erred in making the insurance company liable.

5. In the premises aforesaid, appeal is allowed. It is held that the liability of the original opponent nos.1 and 3 shall remain intact to meet the entire claim award with interest as awarded by the Tribunal. However, so far as the present appellant Insurance Company is concerned, the award will stand modified and the amount awarded against the appellant will be Rs. 9677.68/-(rounded off to 9680/-) with running interest thereon at the rate of 12% per annum from the date of the application till realization. It will be open to the original claimant to recover the remaining amount from original opponent nos.1

and 3. The remaining amount lying in the FDR along with interest shall be refunded to the Insurance Company if the same has not been withdrawn by the original claimants. However, if the amount has been withdrawn, it will be open for the insurance company to recover the same from the owner. The award of the Claims Tribunal shall stand modified accordingly. No order as to costs.

[K.S. JHAVERI, J.]

Divya//